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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Reallocation of Television Channels )  
60-69, the 746-806 MHZ Band )

ET Docket No. 97-157

To: The Commission )

**COMMENTS OF THE COALITION OF AMERICAN RAILROADS**

The Affiliated American Railroads, by their undersigned counsel, and pursuant to Section 1.415 of the Rules of the Federal Communications Commission (the "Commission"), 47 C.F.R. § 1.415, hereby submit their Comments in response to the *Notice of Proposed Rulemaking* in the above-captioned proceeding.<sup>1/</sup>

In the *Notice*, the Commission seeks comment on its proposals to allocate 60 MHZ of spectrum currently allocated to television (TV) channels 60-69. Specifically, the Commission proposes in the *Notice* to allocate 24 MHZ at 764-776 MHZ and 794-806 MHZ to the fixed and mobile services, and to designate this spectrum for public safety use. The Commission then proposes to reallocate the remaining 36 MHZ at 746-764 MHZ and 776-794 MHZ to the fixed, mobile, and broadcast services. The Commission states its belief that licenses in this spectrum would be assigned by competitive bidding, and further states that the Commission will address issues related to licensing and the possibility of auctions in a separate proceeding.

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<sup>1/</sup> *Reallocation of Television Channels 60-69, the 746-806 MHZ Band, ET Docket No. 97-157 Notice of Proposed Rulemaking* (released July 10, 1997) (the "*Notice*").

Following the issuance of the *Notice* by the Commission, Congress adopted the Balanced Budget Act of 1997 (the "Budget Act"), which requires the Commission to allocate the 746-806 MHz band for public safety and commercial uses by January 1, 1998.<sup>2/</sup> The Budget Act mandated that the Commission allocate the Channel 60-69 spectrum in substantially the same manner as proposed in the *Notice*.

The railroad industry supports the Commission's proposed allocation of 24 MHz of this spectrum for public safety services. As detailed in the *PSWAC Final Report*, public safety licensees require additional spectrum to ensure that their critical operations are not endangered by the current overcrowding of their assigned spectrum.<sup>3/</sup> The proposed allocation to public safety will serve to alleviate the current spectrum shortage faced by these licensees and will allow them to develop more advanced and interoperable radio systems, all to the public benefit.

As the Commission recognized in its recent decision in the "refarming" proceeding, the railroads, like public safety entities, use radio spectrum for critical functions essential to public safety and welfare.<sup>4/</sup> These critical safety uses have also

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<sup>2/</sup> Balanced Budget Act of 1997, P.L. 105-33, §§ 3003, 3004.

<sup>3/</sup> See generally *PSWAC, Final Report of the Public Safety Wireless Advisory Committee to the Federal Communications Commission and the National Telecommunications and Information Administration ("PSWAC Final Report")* (Sept. 1996).

<sup>4/</sup> *Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services*, PR Docket No. 92-235, FCC 97-61, *Second Report and Order* (rel. March 12, 1997) ("*Refarming Order*").

been recognized by the Federal Railroad Administration (the "FRA")<sup>5/</sup> and the National Transportation Safety Board ("NTSB")<sup>6/</sup> -- agencies expert in transportation and railroad safety issues. The FRA has cited the essential nature of radio communications in control of train movement, switching operations, communications of wayside detector information and emergency response. According to the FRA, radio communications "are now a vital necessity rather than a convenience."<sup>7/</sup> The FRA has observed further the need for railroads to employ advanced types of data communications technology to increase the safety of railroad operations.<sup>8/</sup>

Moreover, like the spectrum allocated to public safety users, the spectrum used by the railroads for these critical safety and train control functions is currently severely overcrowded, especially in urban areas where the railroads have operations. The railroads have continually sought additional spectrum allocations to alleviate this potentially dangerous overcrowding. However, increasing demands for current and potential railroad spectrum have exacerbated the spectrum shortage faced by the railroads. Railroads and other private safety users have been forced to relocate their fixed operations from the 2 GHz band to make way for Personal Communications

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<sup>5/</sup> See *Railroad Communications and Control: Report to Congress*, Federal Railroad Administration, July, 1994 ("FRA Report"); see also Letter From Jolene M. Molitoris, Administrator, Federal Railroad Administration, to Reed Hundt, Chairman, Federal Communications Commission (Dec. 12, 1995) ("FRA Letter").

<sup>6/</sup> See Letter From Jim Hall, Chairman, National Transportation Safety Board, to Reed Hundt, Chairman, Federal Communications Commission (Dec. 15, 1995) ("NTSB Letter").

<sup>7/</sup> FRA Report at 23.

<sup>8/</sup> *Id.* at 74-76.

Service ("PCS") licensees<sup>9/</sup> and face continuing pressure both domestically and internationally to share their scarce spectrum with emerging technologies such as Mobile Satellite Services ("MSS"). These demands come at a time when the railroads need more spectrum to ensure the continued safe operation of the nation's rail system.

The Commission's proposals in the *Notice* fail to take into account the spectrum needs of the railroads and other private safety spectrum users. By statutory and regulatory definition, the railroads are ineligible to utilize any of the 24 MHz the Commission has proposed to allocate for public safety use. While it is true that the railroads could bid for some portion of the 36 MHz the Commission has proposed to allocate for commercial use, the railroads have demonstrated to the Commission in several proceedings why auctions are a particularly inappropriate allocation and licensing mechanism for railroads and other private internal users.<sup>10/</sup>

Thus it is the railroad industry's position that more spectrum should be allocated to private, internal users of spectrum such as the railroads who employ this spectrum for critical functions which ensure the safety of life, health and property. Over the years, the railroad industry's use of wireless communications technology has increased

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<sup>9/</sup> See *Redevelopment of spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*, ET Docket No. 92-9, FCC 92-437, *First Report and Order and Further Notice of Proposed Rulemaking* (1992).

<sup>10/</sup> See e.g., Comments of the American Association of Railroads ("AAR") in response to the *Report and Order and Further Notice of Proposed Rulemaking in Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services*, PR Docket No. 92-235 (filed Nov. 20, 1995) ¶¶ 28-32; Comments of AAR in response to *Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use*, ET Docket No. 94-32 (filed Dec. 19, 1994).

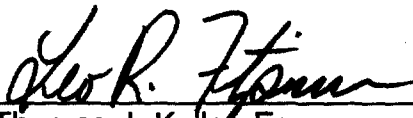
dramatically, and will continue to do so in the future. An attendant consequence of this increased use is an increased demand for spectrum. The Commission must ensure that the spectrum needs of private safety users such as the railroads are adequately met when it allocates new spectrum. The Commission's proposals in the *Notice* fail to accomplish this.

### CONCLUSION

For the foregoing reasons, the railroads support the Commission's proposal to allocate 24 MHZ of spectrum to public safety users but urge the Commission to consider the increasing spectrum requirements of the railroads and other private safety users when it makes future spectrum allocations.

Respectfully submitted,

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Date: September 15, 1997

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I, Tina Harris, hereby certify that the foregoing "Comments of the Affiliated American Railroads" was served by first-class mail, postage prepaid, this 15th day of September, 1997 on the following persons:

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